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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/194,700	03/04/1999	URBAN WIDLUND	000515-141	3507

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

09/194,700

Applicant(s)

WIDLUND, URBAN

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5 and 16 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (US 3,837,343).

With respect to claim 1, Mesek discloses an absorbent article comprising a liquid-pervious surface layer (16), a liquid-impervious surface layer (12) and an absorbent body enclosed between the two surface layers (14) wherein the article further exhibits a wetting region wherein the liquid-pervious surface layer within the wetting region is constituted of hydrophilic absorbent material and all remaining parts of the liquid-pervious surface layer are constituted of a hydrophobic material as set forth in col. 2, line 11 to col. 3, line 49. The examiner would like to point out while Mesek does not explicitly state that the purpose of the invention is to maintain the mucus membranes of a user moist, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a

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process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claims 3 and 5, Mesek discloses an absorbent article wherein the hydrophilic material in the liquid-pervious surface layer primarily consists of hydrophilic absorbent fibers or hydrophobic fibers through the incorporation of Ruffo et al. (US 3,768,118) in col. 4, lines 51 – 54. Ruffo et al. (hereinafter “Ruffo”) discloses the use of hydrophilic, absorbent fibers in col. 10, lines 42 – 61.

Claim 16 is equivalent in scope to claim 1 and is included in the reference of Mesek.

With reference to claims 17 – 22, Mesek discloses an absorbent article wherein an extent of the wetting region is smaller than an extent of the absorbent body, wherein the wetting region covers at least a portion of the absorbent body and wherein at least a portion of the remaining parts of the liquid-pervious surface layer extend over the absorbent body as set forth in figure 9. The wetting region may be considered as the portion of the facing layer that first receives urine emitted by the user. This region, for example, may be the middle portion of the layer between the 3rd and 4th dashed lines. That area is smaller than the extent of the absorbent body and covers at least a portion of the absorbent body. Likewise, the area surrounding the exemplified wetting region may be considered as the remaining part of the surface layer, which also extends over the absorbent body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek (US 3,837,343).

With reference to claims 4 and 6, the examiner contends that the use of any hydrophilic, absorbent material would yield the same results as the claimed hydrophilic, absorbent material because the applicant has not established that one hydrophilic material would function any better than another hydrophilic material. Additionally, it would have been an obvious substitution to one ordinary skill in the art to substitute one hydrophilic material for another based on the desired end product.

Regarding claim 10, it has already been disclosed by the invention of Mesek that the material in the liquid pervious layer is comprised of a hydrophobic material that is rendered hydrophilic as set forth in the abstract. It would then be obvious to one having ordinary skill in the art that the initial hydrophobic material would provide the same results as the hydrophilic material that is rendered hydrophobic since the two materials are functionally equivalent.

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Claims 2, 7 –8 and 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek as applied to claims 1, 3, 5 and 16 above, and further in view of Bien et al. (US 5,885,268).

The difference between Mesek and claim 2 is the provision that the article exhibits a hump projecting from the liquid-pervious surface layer wherein the hump on the article at least partially coincides with the wetting region.

Bien et al. (hereinafter "Bien") teaches an article exhibiting a hump projecting from the liquid pervious surface layer as set forth in figure 5.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Mesek to employ a hump in the wetting region because the hump would provide improved contact of the absorbent article with the wearer as taught by Bien in col. 3, lines 36 – 44.

Regarding claim 7, Bien teaches an article wherein the liquid pervious surface layer comprises a laminate of a first liquid-pervious layer, hydrophobic material layer arranged closest to the absorbent body (col. 9, lines 50 – 55) and a second, liquid-pervious, hydrophilic material layer of substantially a same extension as the wetting region of the article, arranged outside the first material layer and intended to bear on the body of the user in the wetting region during use as set forth in col. 8, line 50 to col. 9, line 36 and figure 5.

With reference to claim 8, Bien teaches an article wherein the material is structured as claimed by the applicant and further exhibits an opening, of substantially the same extension as the wetting region of the article, through which the hydrophilic layer is exposed as set forth in col. 8, line 50 to col. 9, line

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55. Bien teaches that the hydrophobic material layer may be an apertured plastic film. In this instance, the underlying hydrophilic layer would be exposed.

As to claim 13, Bien teaches an article comprising a shaping member which, by means of influence from forces which the article is subjected to during use, has an ability to bring the wetting region into contact with the mucous membranes of the user as set forth in col. 3, lines 45 – 54 and col. 12, line 50 to col. 13, line 6.

With reference to claim 14, the examiner contends that the use of any hydrophilic, absorbent material would yield the same results as the claimed hydrophilic, absorbent material because the applicant has not established that one hydrophilic material would function any better than another hydrophilic material. Additionally, it would have been an obvious substitution to one ordinary skill in the art to substitute one hydrophilic material for another based on the desired end product.

With respect to claim 15, Bien teaches the shaping member as an insert as set forth in col. 15, lines 11 to col. 16, line 8 and figure 5.

Response to Arguments

Applicant's arguments filed June 11, 2002 have been fully considered but they are not persuasive.

In reply to the applicant's argument that Mesek does not teach hydrophilic portions of the facing layer over the absorbent layer, the examiner directs the applicant to col. 2, lines 14 – 17 in which Mesek states that the central portion of

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the wetting layer is readily wettable. Additionally, col. 2, lines 33 – 39 states that the central portion has a wetting agent incorporated therein in order to effectively prevent absorbed urine from wicking outwardly.

In response to the applicant's argument that Mesek does not clearly teach or suggest an absorbent article wherein all of the remaining parts of the liquid pervious surface layer are constituted of hydrophobic material, the examiner disagrees.

Mesek discloses that the entire facing layer is uniformly constituted of an admixture with 2% rayon (i.e., a hydrophobic material) as set forth in col. 4, lines 34 – 37. This provides a facing layer in which all remaining parts of the liquid pervious surface layer are constituted of a hydrophobic material.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a smaller hydrophilic region) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl; can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
August 27, 2002


GLENN K. DAWSON
PRIMARY EXAMINER